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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAY 11 2009

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IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time she filed the petition, the petitioner was a staff scientist in the Neurosurgery Department at the University of Illinois at Chicago (UIC); she has since relocated to New York. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel, as well as new witness letters and additional exhibits.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The regulation at 8 C.F.R. § 204.5(k)(4)(ii) requires that a petitioner seeking to apply for the exemption must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate. The record does not contain this required document, and therefore the petitioner has not properly applied for the national interest waiver. The director, however, did not note this omission in the denial notice. We will, therefore, review the matter on the merits.

In a statement submitted with the April 16, 2007 filing of the petition, the petitioner stated:

> I wish to live permanently in the United States to continue my work in the field of Neurological Surgery and Neurosciences (new diagnostic and management research for patients undergoing surgery to treat trigeminal neuralgia [a painful disorder of facial nerves] and Parkinson's disease).
>
> . . . I have been doing research in various areas, which lead [*sic*] to several publications on topics like stroke, cancer, social issues, various biomedical techniques and pharmacology. . . . [A]t the Emory University Atlanta from 2005-2006, . . . I played a key role in developing a standard diagnostic and management tool for diabetic neuropathy in the medically indigent population and hence managing diabetes in a better way in the United States. I am currently working as a Research Fellow In the department of Neurological Surgery at the University of Illinois at Chicago, where I am working on studying natural history of trigeminal neuralgia, new diagnostic and management tools for patients suffering from it and also writing . . . a paper on pregnancy associated changes in trigeminal neuralgia. . . . I am also working on the debilitating condition of Parkinson's disease and its surgical treatment.

Counsel credited the petitioner with "major breakthrough[s] in medical science." To support this assertion, the petitioner submitted seventeen witness letters with the initial filing. Most of the witnesses are UIC researchers, and every witness is at an institution where the petitioner had worked or studied. Most of the numerous witnesses offered largely general praise for the petitioner's skill and dedication. Rather than provide a lengthy and largely redundant discussion of every letter, we will focus, here, on letters providing more specific details.

Associate Dean of Student Affairs at the Aga Khan University, Karachi, Pakistan, stated that the petitioner "was an excellent student" who "was . . . involved in a number of research projects during the course of her studies." [redacted] identified eight such projects, but only two of them show publication information, with a third apparently presented at a conference. [redacted] did not indicate the extent, if any, of the dissemination of the petitioner's other findings. also did not indicate the impact, if any, of the identified research projects.

[redacted] of the University of Heidelberg, Germany, stated:

> [The petitioner] was a medical department and worked under my supervision from September until November 2002.
>
> . . . She attended rounds and grand rounds as well as neuroradiological conferences. She was able to join the diagnoses of spinal and intracranial disorders and was very interested to join neurosurgical operations. She assisted [in] several [surgical] cases. . . . She was also involved in a research project regarding preoperative functional imaging as a preparation for tumor surgery in eloquent areas.

focused on the petitioner's clinical practice of medicine, with only a passing mention of "a research project." This, coupled with [redacted] description of the petitioner as a "medical student," indicates that there was little emphasis on research during the petitioner's time in Heidelberg.

[redacted] stated:

> [The petitioner] is currently involved in studying [the] natural history of trigeminal neuralgia and devising a standard questionnaire for diagnosis and management of facial pain patients as well as writing a paper on trigeminal neuralgia changes associated with pregnancy.
>
> She discovered that in some pregnant patients trigeminal neuralgia actually improves even without medication. Nothing has been written so far on this; hence in my opinion it will be a major breakthrough in medical science. Since this disease is long standing and chronic, this discovery will have major impact on the therapeutic approaches related [to] trigeminal neuralgia and possible cure of the disease.

[redacted] called the petitioner "an indispensable member of our research team. I have been consistently impressed with her abilities as a scientist and expect that in the long term her work will have a lasting impact on the field of neurosurgicial research. Overall [the petitioner] has made significant contributions to the research conducted in this area."

[redacted] of UIC (no title specified) stated: "I was impressed with her expertise and the excellence of data she collected [in a] relatively short period of time. Her knowledge in trigeminal neuralgia has been very valuable in this study."

[redacted] another UIC physician with no stated title, stated that the petitioner "is an accomplished young research scientist who has published about breast cancer, stroke and trigeminal neuralgia as well as social issues like domestic violence and factors associated with smoking in college going students."

The petitioner submitted copies of two of her published articles, published respectively in 2001 and 2006. The petitioner's initial submission did not include evidence of independent citation of those articles.

On June 6, 2008, the director issued a request for evidence, indicating that the petitioner had not established the impact or influence of her research work. The director instructed the petitioner to submit "[c]opies of published articles by other researchers citing or otherwise recognizing the self-petitioner's research and/or contributions," or printouts from a citation database identifying such articles.

In response to the request for evidence, counsel stated that the petitioner's "research findings have been cited and discussed by other prominent scientists as authoritative in several publications." Counsel stated: "Appended as Exhibit 2 are published articles that have analyzed, discussed, referenced or cited [the petitioner's] work as authoritative." The three items listed under "Exhibit 2" are all articles by the petitioner herself.

Counsel then stated that the petitioner's "specific research inquiries have been discussed at length and are supported by an abundance of documentation from other scientist[s] (See Ex. 3)." Counsel's description of Exhibit 3 was a list of twenty published pieces. When we examine the published pieces themselves, however, we cannot see how they reflect the petitioner's influence. For instance, the first published piece is an article by 16 researchers, mostly at institutions in Atlanta (including Emory University). This article was submitted for publication in March 2001, when the petitioner was a 20-year-old medical student, and several months before the petitioner's earliest documented publication.

The article has been highlighted liberally, emphasizing the names and [redacted] and certain portions of text. The article's bibliography identified 110 sources. The only thing highlighted in the bibliography is name, on articles published while the petitioner was a teenager. The petitioner did not explain how her work was "discussed at length" in this article.

Another article, number 5 on counsel's exhibit list, was submitted for publication in 1989 when the petitioner was nine years old. This article may touch on areas in which the petitioner later conducted research, but it clearly predates her own research career and therefore cannot possibly show her influence as a researcher.

The director denied the petition on September 16, 2008, stating "there is no evidence that independent researchers view the petitioner's individual work as particularly significant or influential." On appeal the petitioner submits copies of six articles, all published in 2008, containing citations to a 2006 article by the petitioner. One of these citations is a self-citation by the petitioner's co-author, [redacted]. The petitioner has not shown that the number of citations is unusual in her field.

Even disregarding their low quantity, the newly-submitted citations appeared after the petition's filing date and therefore cannot establish that the petitioner was already an influential researcher when she filed the petition. The petitioner must have been eligible for the benefit sought as of the petition's filing date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971).

The petitioner submits five new witness letters on appeal. Two of the letters, attributed respectively to [redacted] of Mid-Ohio Valley Nephrology Associates and of St. John's Queens Hospital, are completely identical except for the letterhead and signatures. The two letters even contain the same errors of grammar and capitalization. For example, both letters indicate that the petitioner "fulfils the requirements of the eligibility for National interest waiver to pursue the research projects, which will be very beneficial to the people of United States at large." Clearly, [redacted] and [redacted] did not happen to write exactly the same letter. Therefore, the petitioner's submission of

identical letters from two supposedly independent witnesses raises obvious questions about the true origin of the letters.

Furthermore, the questions about the two letters discussed above necessarily raise doubts about the other letters in the record, whether submitted on appeal or previously. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Two other new letters on appeal also contain errors of grammar and capitalization, which suggests that they are from the same source as the two identical letters. A letter attributed to [redacted] of Astoria, New York, states that the petitioner "merits the special benefit of a national interest waiver and she does qualify as the 'Prospective' as her contributions is significant enough for the medical community." A letter attributed to [redacted] of St. John's Queens Hospital states that the petitioner's "work is cited in scholarly articles and she does qualify as the 'Prospective' and hence, I enthusiastically submit my unqualified recommendation." We note that both of these letters refer to the petitioner as "the 'Prospective.'"

The only letter submitted on appeal that does not share the general characteristics of the above letters is from [redacted], Director of Research at Georgia Cancer Specialists and also a Professor at the University of Alabama Comprehensive Cancer Center. [redacted], like the petitioner, attended the University of Heidelberg. [redacted] states that the petitioner "was involved in the generational [*sic*] of a number of clinical protocols, many of which are awaiting approval by the Institutional Review Boards (IRB) at those respective institutions, and will most likely lead to important clinical trials." [redacted] thus indicates that the petitioner has designed studies that have not yet taken place, in which case it seems to be too early to gauge the importance of the petitioner's work. Similarly, [redacted] states that the petitioner's work "should lead to significant improvement in the diagnosis and management of patients with trigeminal neuralgias," but does not specify what results the petitioner's work has already had in this regard.

The record indicates that the petitioner's research is not without intrinsic merit, and has national scope by virtue of the nature of published medical research. Nevertheless, the petitioner has not established that her research work distinguishes her from others in her field to an extent that would justify a national interest waiver. Most of the minimal evidence of her impact dates from after the petition's filing date. A number of articles said to reflect her influence were, in fact, published well before the petitioner began her research career. The petition rests largely on witness letters that have been compromised for reasons discussed above.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not

established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.